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January 31, 2023

Honorable Marcia M. Henry (*by ECF*)
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Kellner v. City of New York, et al., 17-cv-01268 (MKB) (MMH)

Dear Magistrate Judge Henry:

I am an attorney in the office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, counsel for defendants in the above-referenced matter. For the reasons below, I write to request an extension of the current January 30, 2023 deadline (and the current deadline of March 2, 2023, to complete all fact discovery), to March 31, 2023, for the purpose of completing plaintiff's deposition. Defendants apologize for making this application after the deadline; however, it was impractical to do so sooner because the issues that make this request necessary arose during the deposition, which took place on January 25, and 30, 2023, pursuant to the Court's January 17, 2023 Order.¹ Plaintiff's counsel has advised that he consents to this request.

By way of background, the Court had set a January 30, 2023 deadline in which to conduct the deposition. Thereafter, the Court granted defendants' request to conduct the deposition on two dates – January 25, 2022, and January 30, 2023 – and to allow defendants to exceed the presumptive seven-hour limit for plaintiff's deposition by four hours. Although the deposition proceeded on those dates, defendants were unable to complete the deposition. The progress of the deposition was hampered as a result of many lengthy narrative answers that were often not responsive to the questions posed. Among other things, it was necessary to ask many questions more than once. In addition, plaintiff communicated at the outset of the deposition that he needed

¹ Defendants were hopeful that the issues, which initially arose on January 25, 2023, would be resolved before the continuation of the deposition on January 30, 2023. When it appeared that there was no resolution as of the morning of the second day of the deposition, defendants contacted the Court by telephone and the parties communicated with Chambers to advise of the problem in keeping with Item # IV of Your Honor's Individual Practice Rules and in light of the deadline of the same date to complete the deposition.

additional time in which to respond to questions because English is not his primary language, although he did not feel that he required the assistance of an interpreter. Further, lengthy questioning of plaintiff has been needed because of the scope and complexity of the issues presented in this matter involving plaintiff's prosecution of more than two years on charges of conspiracy, grand larceny, perjury, and criminal solicitation; the allegedly related matters of his son's complaint against Baruch Lebovits for sex crimes and two other interrelated prosecutions; plaintiff's involvement with the Lebovits family and their representatives, the sexual assault victims and their families and representatives; witness "tampering" of one of more sexual assault victims; the members of the Kings County District Attorney's office and the NYPD with whom plaintiff interacted; his interactions with members of the community in Brooklyn; and his alleged damages. The underlying events out of which plaintiff's claims arise is complex, involving many direct and indirect interactions and witnesses, assistant district attorneys, and sexual assault complainants, and allegations of conspiracy and perjury, all of which took place during the administrations of two District Attorneys, all of which attracted substantial attention of the media and the community.

Additionally, counsel for the parties learned during the deposition that it was necessary for plaintiff to produce additional releases for medical and arrest records of plaintiff. Plaintiff anticipates that he will produce the releases by February 1, 2023. Defendants anticipate that it will likely take a minimum of 30 days before they receive the records. As a result, after conferring on dates, the parties have provisionally set aside March 15 and 16, 2023, as possible dates for the continuation of the deposition. It is possible, however, that it may take some additional time before the parties have possession of the records.

For the above reasons, defendants ask that the Court allow them to March 31, 2023, to complete plaintiff's deposition.

Thank you for your time and attention to the above.

Respectfully submitted,

/s/ Susan P. Scharfstein

Susan P. Scharfstein

cc: Counsel of record (*by ECF*)